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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1947

No. **442**

RANDOLPH PHILLIPS, *Petitioner*

v.

THE BALTIMORE AND OHIO RAILROAD  
COMPANY, *Respondent*.

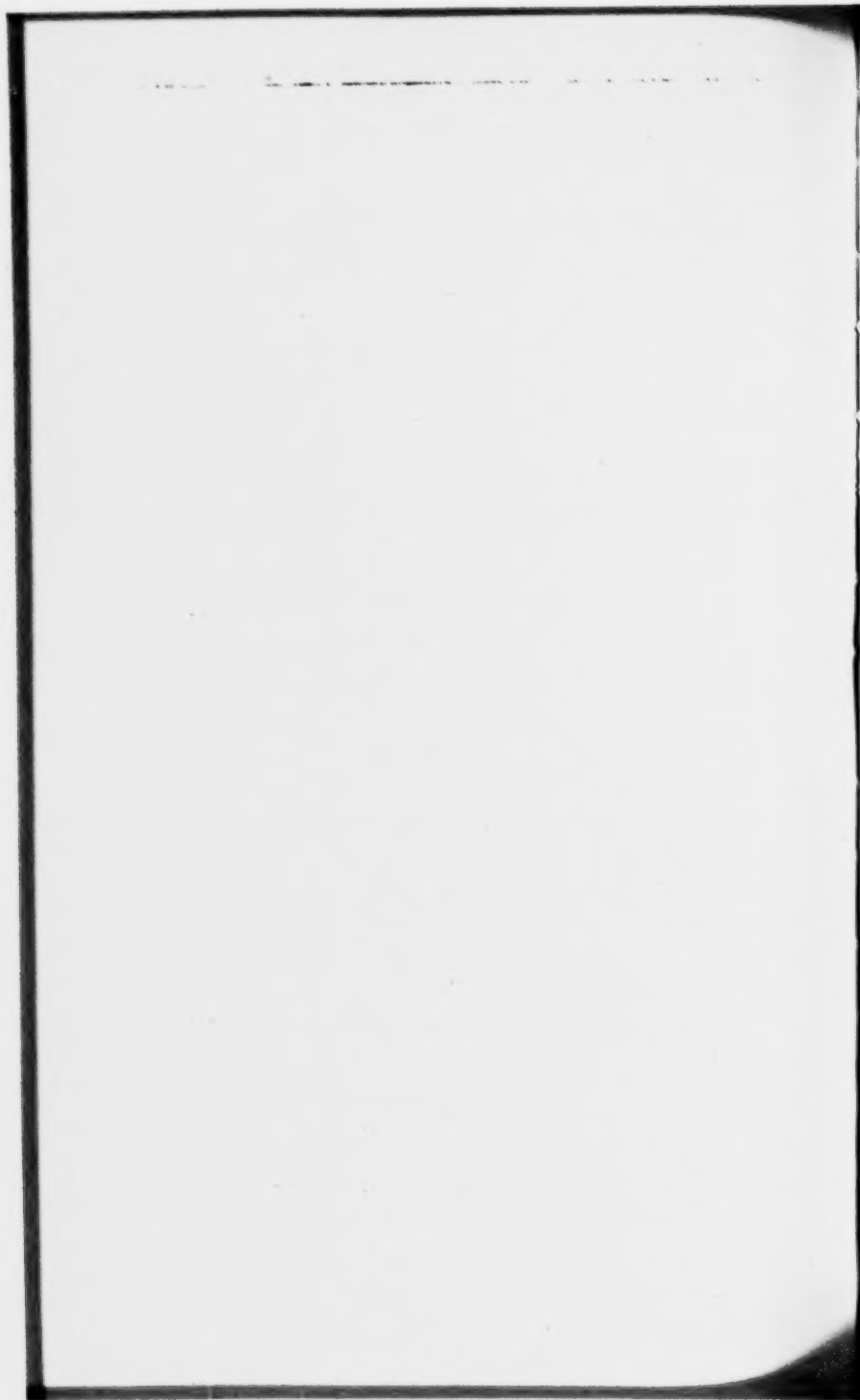
**RESPONSE  
TO  
PETITIONER'S MOTION TO DISPENSE WITH  
PRINTING OF THE RECORD FOR PURPOSES  
OF THE PETITION FOR CERTIORARI**

✓ EDWIN H. BURGESS

✓ FREDERICK E. BAUKHAGES  
*Counsel for Respondent*

SULLIVAN & CROMWELL

VENABLE, BAETJER & HOWARD  
*Of Counsel*



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To the Honorable Fred M. Vinson, Chief Justice of the  
United States, and the Associate Justices of the Supreme  
Court of the United States:

Comes now The Baltimore and Ohio Railroad Company, and in response to Petitioner's Motion to Dispense with Printing of the Record for Purposes of the Petition for Certiorari, respectfully shows:

I

The Baltimore and Ohio Railroad Company is named as party respondent (and is hereinafter so referred to) in a certain paper designated as a "Petition for a Writ of Certiorari to the United States District Court for the District of Maryland and Brief in Support of Petition", which said Petition is entitled as above and was lodged with the Clerk of this Court on November 15, 1947, together with a paper designated as a "Motion to Dispense with Printing of the Record for Purposes of the Petition for Certiorari" similarly entitled.

## II

The motion to dispense with printing (hereinafter called the Motion) seeks relief, in aid of the Petition, from this Court's Rule 38 (particularly paragraphs 3 and 7), requiring the printing of the record in the case, including the proceedings in the court to which the writ is asked to be directed. The stated ground on which it is alleged the Motion should be granted is that "the record in this case consists of about 5,000 pages of testimony and exhibits", and that—

"Printing for the first time the relevant parts of such an extensive record with the present pressure on printing facilities would be a task of uncertain duration and there is no assurance that the printed record would be ready in time for the Court's use in passing on the petition."

And, further, that—

"\* \* \* it would be unfortunate for [Petitioner] to expend the substantial sum involved in printing the record before this Court determines whether it will hear the matter on the merits."

## III

The "record in the case" sought to be presented by the Petition, as appears from the facts hereinbelow set out, consists, not of "5,000 pages of testimony and exhibits", but solely of a motion to vacate a decree, with the annexed papers (which motion and decree are hereinafter more particularly identified), filed by Petitioner in the District Court of the United States for the District of Maryland.

## IV

A clear exposition of the issue presented by the Motion and this Response necessitates a brief recital of the background of the Petition.

In Cause No. 1220 at its October, 1945 Term, this

Court entered an order, on June 10, 1946, denying a petition for a writ of certiorari which had been filed by the same Petitioner now moving the Court. That petition is hereinafter referred to as the First Petition.

By his First Petition the Petitioner sought review of the final decree (hereinafter referred to as the Decree) of the District Court of the United States for the District of Maryland, sitting as a special court of three judges convened pursuant to the provisions of Chapter XV (Section 713) of the Bankruptcy Act, which said Decree had been entered March 13, 1946 in a proceeding, pending in said District Court, entitled "In the Matter of The Baltimore and Ohio Railroad Company, Petitioner. In Proceedings for a Railroad Adjustment under Chapter XV of the Bankruptcy Act No. 9905 Bkpt. Dkt."

The "5,000 pages of testimony and exhibits" referred to in the Motion constitute the record underlying the Decree, which record Petitioner sought to bring to this Court by his First Petition.

Following the entry of this Court's said order of June 10, 1946 denying the First Petition, and the entry of its order of October 14, 1946 denying a rehearing, Respondent duly proceeded to consummate the Decree in accordance with its terms.

Chapter XV of the Bankruptcy Act expired by limitation on November 1, 1945.

On September 3, 1947, the Petitioner now moving this Court filed in the District Court a motion to vacate the Decree.

On September 17, 1947, the District Court entered an order denying Petitioner's motion to vacate the Decree.

The record upon which was entered the District Court's order denying the motion to vacate, consisted of that motion itself, which urged vacation of the Decree on the alleged ground of newly discovered evidence. The "new evidence" was alleged to have been developed in "the record of the hearings and evidence taken by the

Senate Banking Committee" (paragraph 38, p. 27 of the motion to vacate) and to be set forth in a document shown on its face to have been "printed for the use of the Committee on Banking and Currency" of the United States Senate, a copy of which said document was annexed to Petitioner's motion to vacate the Decree as Appendix A thereto.

## V

The order denying the motion to vacate the Decree was entered, as aforesaid, on September 17, 1947, and Petitioner filed a praecipe for record with the Clerk of the District Court on October 7, 1947. The Motion was not presented until November 15, 1947.

## VI

Respondent does not herein undertake to answer the Second Petition, but will file such answer in proper form and due time.

## VII

The stated justification for the relief sought by the Motion rests upon Petitioner's misconception of his case. Printing of the record in this case, in the usual manner in accordance with Rule 38, would be neither onerous nor time consuming.

WHEREFORE, it is respectfully represented that the Motion is without merit; that in any event, it was not timely filed; and that it should be denied.

Respectfully submitted,

EDWIN H. BURGESS

FREDERICK E. BAUKHAGES

*Counsel for Respondent*

SULLIVAN & CROMWELL

VENABLE, BAETJER & HOWARD,

*Of Counsel*

December 3, 1947